a contract, such as to secure liability on an obligation not knowingly assumed by the party, will constitute a defense. This is termed fraud *in esse contractus.* Thus signatures to promissory notes have been secured by misrepresentation of a duplicate agency contract, or by concealing a note in a contract and later clipping out the note and signature, or by misreading an instrument to a person entitled to rely upon the reading, or by a substitution of one instrument for another. Notes so secured cannot be recovered upon, even by a holder in due course. *Kagel* v. *Totten,* 59 Md. 447; *Green* v. *Wilkie,* 98 Iowa 74, 66 N. W. 1046; *Eldorado Jewelry Co.* v. *Darnell,* 135 Iowa 555, 113 N. W. 344; *Brown* v. *Reed,* 79 Pa. St. 370; *Porter* v. *Hardy,* 10 N. D. 551, 88 N. W. 458. On the other hand, fraud in the inducement—that is, inducing a person to make a note, upon fraudulent representations as to collateral matters or as to the legal effect of the note—is not a defense to an action by a holder in due course. *Taylor* v. *Gribb,* 100 Ga. 94; *David* v. *Merchants Bank,* 103 Ky. 586; *Beath* v. *Chapoton,* 115 Mich. 506. There the maker really intended to sign, and the concealed conditions would not affect an innocent purchaser of the note. Thus, in *Jackson* v. *Chemical Bank,* 46 S. W. 295, the signing was induced under a promise that the note would not be put in circulation. Where the fraud is *in esse contractus* the defense is not available if the maker was negligent in ascertaining the nature of the instrument or its terms. *Douglass* v. *Matting,* 29 Iowa 498; *Gibbs* v. *Linabury,* 22 Mich. 479; *Williams* v. *Stoll,* 79 Ind. 80. In the instant case defendant was in poor health and suffering from eye trouble. That alone should not excuse the signing. Mere failure to read the note is insufficient. *Yeomans* v. *Lane,* 101 Ill. App. 228; *Graham* v. *Insurance Co.,* 110 Mo. App. 95; *Ort* v. *Fowler,* 31 Kan. 478; *Chapman* v. *Ross,* 56 N. Y. 137. Where a person is unable to read he should request assistance from others present who can read, and failure to do so may defeat the defense. *Brown* v. *Feldwert,* 46 Ore. 363; *Shores Co.* v. *Lonning,* 159 Iowa 95, 140 N. W. 197. But if the relation of the parties is such that the maker is entitled to repose confidence in the person making the representation, then a failure to call other persons present may not prejudice the defense. So in the instant case the fact that the two sons of the defendant were present in the room when the instrument was signed, and that they were not called to read or see the instrument believed to be a divorce petition, would not in itself be negligence. The relation of attorney and client coupled with the temporary disability of the client is a more weighty consideration.

BILLS AND NOTES—RECOVERY OF MONEY PAID BY THE SECRETARY OF THE TREASURY ON FORGED DRAFT.—Action by the United States to recover the amount of a draft paid by the Secretary of the Treasury to Defendant Bank. The draft was dated in the Argentine Republic, and apparently signed by Crane, the American Consul, whose signature had been forged. Defendant was the holder in due course, and was paid the amount of the draft under a mistake of fact,—both parties being ignorant of the forgery. *Held,* the United States cannot recover the money paid. *United States* v. *Bank of New York,* (Cir. Ct. App., second circuit, 1914), 219 Fed. 648.

As a general rule the drawee of a draft, having paid, it, cannot recover the money paid to a holder in due course, upon discovery that the drawer's name was forged. He is presumed to know the handwriting of the drawer, and is estopped to deny its genuineness. *Price* v. *Neale,* 3 Burr. 1354; *Nat'l. Park Bank* v. *Ninth Nat'l. Bank,* 46 N. Y. 77; *U. S. Bank* v. *Bank of Georgia,* 10 Wheat 333, 6 L. ed. 334. See 10 MICH. LAW REV. 226, and cases there cited. *Bank of Cottage Grove* v. *First Nat'l. Bank,* 117 Pac. 293. The basis for the rule is the same as that supporting the liability of a bank to know the signature of its customer, in that it is presumed to have greater means of becoming familiar with the handwriting of a depositor than has the holder of the instrument. However, the rule does not apply in case the holder by negligence has contributed to the success of the fraud. *Myers* v. *S. W. Nat'l. Bank,* 193 Pa. 1, 44 Atl. 280; *Woods* v. *Colony Bank,* 114 Ga. 683, 40 S. E. 720; *Brennan* v. *Merchants Bank,* 62 Mich. 343, 28 N. W. 881; *Weisberger Co.* v. *Barberton Bank,* 84 Oh. St. 21. No such charge was made against the defendant in the instant case. The argument of counsel for the United States was that the Secretary of the Treasury is not presumed to know the signature of such agents as are authorized to draw upon him; that the general rule is confined within limits, and the application of it here would be unreasonable; and that the United States is entitled to greater protection than an individual in such a case as the present. In *United States* v. *National Exchange Bank,* 214 U. S. 302, 29 Sup. Ct. 665, an action was brought to recover sums paid on one hundred and ninety-four pension checks, where the signatures of the payee were forged. Recovery was granted, and the court said that to apply the rule, (based on the presumption of a duty to know signatures), to the government in its duty of paying millions of pension claims, usually discharged by means of checks, would be clearly unreasonable and contrary to common sense. But that case involved the forgery of the name of the payee. And a case in accord, *United States* v. *County Bank,* 64 Fed. 703, 12 C. C. A. 407, involved the forgery of an indorser's name. Those cases are easily distinguished from one in which the drawer's name is forged. The common law rule never required the drawee to know the genuineness of the signature of the payee or indorser. And no good reason is suggested why the United States should not protect itself against imposition, as banks are required to do. Those who have the right to draw bills upon the government are relatively few in number. The United States, when it becomes a party to an instrument of commercial paper, should incur all the responsibility of a private person under the same circumstances. *Cooke* v. *United States,* 91 U. S. 389, 23 L. ed. 237.

CONDITIONAL SALE—ELECTION OF REMEDIES.—Plaintiff sold to defendants' grantor certain bottling machines on condition that title was to remain in the plaintiff until fully paid in cash. Breach was made by vendee. Plaintiff brought an action for the purchase price, but was compelled to take a nonsuit. He then brought an action for conversion. Defendant contended that the bringing of the first action was an election of remedies and barred the action for conversion. *Held,* that since the action for the purchase price